

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

**DOROTHY BENTLEY, as  
Administratrix of the Estate of  
JERRY BUCKNER,**

**Plaintiff**

**3:07-cv-00873-MHT-WC**

**V.**

**JIMMY ABBOTT, et al.,**

## Defendants.

**DEFENDANT TALLAPOOSA COUNTY JAIL'S MOTION TO DISMISS**

COMES NOW the Defendant designated in Plaintiff's Complaint as the Tallapoosa County Jail, and moves this Court to dismiss all claims against it pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As grounds therefor, the Defendant states as follows:

1. The Plaintiff has filed a Complaint naming, *inter alia*, an entity designated as the Tallapoosa County Jail.

2. Assuming, *arguendo*, that the Plaintiffs have stated otherwise valid causes of action, the Plaintiff's allegations against the Tallapoosa County Jail still fail to state a claim as a matter of law. Under Alabama law, a sheriff's department is not a legal entity that may sue or be sued. See Dean v. Barber, 951 F.2d 1210, 1214 (11th Cir. 1992). In *Dean*, the Eleventh Circuit began by noting that

“[s]heriff’s departments and police departments are not usually considered legal entities.” 951 F.2d at 1214. The Court went on to hold that “[u]nder Alabama law, a county sheriff’s department lacks the capacity to be sued.” Id. at 1215, (citing White v. Birchfield, 582 So. 2d 1085, 1087 (Ala. 1991)).

3. The same reasoning applies to the Tallapoosa County Jail. Like sheriffs’ departments, county jails under Alabama law are run by the sheriff. See, e.g., Turquitt v. Jefferson County, 137 F.3d 1285, 1289 (11th Cir. 1998) (“Under the Alabama Code, the sheriff has control over the inmates of the jail, the employees of the jail, and the jail itself”). Also like the sheriffs’ departments, there are no provisions under Alabama law recognizing a county jail as an entity that is capable of suing or being sued. As such questions are controlled by state law, the Defendant designated as the Tallapoosa County Jail is due to be dismissed. Dean, 951 F.2d at 1214-15.

4. Plaintiff’s counsel conceded that the Tallapossa County Jail is not a suable legal entity.

5. Consequently, the Plaintiff cannot maintain an action against this Defendant.

**WHEREFORE, THE ABOVE PREMISES CONSIDERED**, the entity identified in the Plaintiff’s Complaint as the Tallapoosa County Jail respectfully requests that the Court issue an Order dismissing it as a Defendant in this cause.

Respectfully submitted, this 19th day of November, 2007.

**s/Gary L. Willford, Jr.**

BART HARMON – Bar No. HAR127

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 19th day of November, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to participants. Non-participants have been served via U.S. Mail, postage prepaid:

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Dr. Shuister c/o Tallapoosa County Jail 316 Industrial Park Drive Dadeville, AL 36853	Defendant  via U.S. Mail
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**s/Gary L. Willford, Jr.**  
OF COUNSEL